

Decision 02-06-055 June 27, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
For an Expedited Approval Under Public Utilities
Code Section 851 to Grant Easements to Placer
County Department of Public Works to Allow
Widening of Bell Road.

(U 39 M)

Application 02-03-055
(Filed March 27, 2002)

**DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE
SECTION 851 FOR CONVEYANCE OF EASEMENTS BY PACIFIC GAS
AND ELECTRIC COMPANY TO PLACER COUNTY DEPARTMENT OF
PUBLIC WORKS FOR WIDENING OF BELL ROAD**

1. Summary

This decision grants the unopposed application¹ of Pacific Gas and Electric Company (PG&E) for Commission authorization under Public Utilities Code Section 851² for PG&E to convey four permanent easements to the Placer County Department of Public Works (the County). These easements will enable the County to widen Bell Road, located in the northern Auburn area, from two lanes to four lanes in order to address traffic problems.

¹ The application was filed on March 27, 2002. In Resolution ALJ 176-3086, dated April 22, 2002, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are unnecessary. No protests to the application were filed.

² All statutory references are to the Public Utilities Code unless otherwise referenced.

2. Background

A. The Project

The County proposes a project to widen Bell Road from two lanes to four lanes in order to meet the transportation and circulation demands of the northern Auburn area. Bell Road and State Route 49 (S.R. 49) both currently experience high traffic volumes during peak travel periods, such as commute hours. The County plans to widen Bell Road between S.R.49 and Interstate 80 (I-80) in order to increase the use of Bell Road by motorists traveling to I-80, which will divert traffic from S.R. 49 south of Bell Road. The project includes widening Bell Road to provide four 12-foot travel lanes (two in each direction), painting a 14-foot median section (that will be striped as a left turn picket at intersections and high use driveways), and constructing two 8-foot shoulders.

At the time of the original construction of Bell Road in the 1970's, the County obtained rights of way for the future expansion of Bell Road to four lanes. However, the County now needs rights of way over small pieces of property in order to accommodate the four-lane design. The County is requesting two permanent drainage easements, which are necessary to construct ditches from drainage culverts, and two permanent regrading easements from PG&E to regrade behind a small area of fill ditch on both the northern and southern sides of the road. Legal descriptions and plats of the draining easements and the regrading easements are attached to the Application as Exhibits A and B, respectively, and are incorporated into this decision by reference.

The PG&E property involved in the project is part of PG&E's hydroelectric generation facilities. The County needs to obtain the proposed

easements from PG&E as quickly as possible in order to start construction and to meet its schedule for completion of the project by June 2003.³

The size of the two drainage easements is approximately 4,668 square feet and 2,108 square feet, respectively. The size of the two regrading easements is approximately 2,143 square feet and 7,536 square feet, respectively.

B. The Proposed Agreement between PG&E and the County

PG&E has filed two proposed agreements with the County, a drainage easement agreement and a regrading easement agreement, to be executed if the Commission approves this application. In the drainage easement agreement, PG&E grants a non-exclusive easement to the County to excavate, construct, install, maintain, and use a biofiltration swale and ditch and for open-channel drainage of water from a culvert on the adjacent County land. In the regrading easement agreement, PG&E grants a non-exclusive easement to the County to excavate, construct, install, maintain, and use road and highway improvements, other than a paved road surface, including a right of use for grading and support of Bell Road, on two adjacent strips of PG&E land. The County generally may not assign these easements.⁴

In both agreements, PG&E has reserved the right to use the easement areas as necessary and appropriate to serve its patrons, consumers, and the public. Under the agreements, the County must coordinate with PG&E to minimize interference with PG&E's use of the easement areas and the adjoining

³ Weather conditions in Placer County may limit the period in which the County may perform construction to only the spring and summer months.

⁴ The County may assign the easements only in connection with a future conveyance of the adjacent County property, and this property remains in use as a roadway.

PG&E land. The County may not create a nuisance or otherwise use the easement area in a way that endangers human health and safety, PG&E facilities, or the environment. The County's use of the easement areas must be compatible with the applicable Commission General Orders and decisions and other legal requirements. The County must maintain the easement areas in good condition, must prevent its drainage from entering PG&E canals, and must protect the easement areas from damage that could result from any discharge of hazardous substances or materials from the culvert on adjacent County land. The County is also responsible for maintaining security in the easement areas. The County may not construct additional facilities in the easement areas without the prior consent of PG&E and, when legally required, the Commission.

In addition, with certain exceptions,⁵ the County has agreed to indemnify and defend PG&E from any claims for liability for personal injury (including death) or property damage in the easement areas, violation of any legal requirement, or strict liability imposed by law, which arise from the County's occupancy or use of the easement areas. The County has previously inspected the property and agreed to accept all risks related to its use of the easement areas, and has acknowledged the possible presence of potential

⁵ The County's indemnification of PG&E does not include any claim arising from the sole negligence or willful misconduct of PG&E, or claims related to the presence of hazardous materials or substances in, on, under, or about the easement area, which do not result from the introduction of hazardous substances or materials on the site by the County, the County's negligence or intentional misconduct, or the exacerbation of environmental conditions on the site by the County. The County otherwise indemnifies PG&E from all claims connected with the release or spill of any hazardous substance connected with the County's use of the easement area. In addition, the County has agreed to take precautions to protect its contractors, employees, and the public from any hazardous materials on the site.

environmental hazards in, on or about the easement areas.⁶ In order to further protect PG&E from liability, the County must carry a specified level of insurance coverage during the term of the agreements.⁷

The County will pay PG&E \$13,000 for all four easements.

C. Environmental Review

The California Environmental Quality Act (Public Resources Code Section 21000, et seq., hereafter CEQA), applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations, hereinafter CEQA Guidelines, Section 15002.)

Since the proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed (i.e., the Commission must act on the Section 851 application), this Commission must act as either a Lead or a Responsible Agency under CEQA. The Lead

⁶ The agreements define “potential environmental hazards” to include hazardous wastes, polychlorinated biphenyls (PCBs), special nuclear or byproduct materials, radon gas, formaldehyde, lead contamination, fuel or chemical storage tanks, electric and magnetic fields or other substances, material, products or conditions.

⁷ This insurance must include commercial general liability insurance, which names PG&E as an additional insured, in the amount of \$5 million per occurrence, with additional coverage for defense costs; business auto insurance; and workers compensation and employer’s liability insurance. As a public agency, the County may self-insure for some or all of these obligations. However, if the County opts to self-insure, it is liable to PG&E for the same amounts specified in the insurance requirements stated in the agreements and is held to the same standards of good faith and promptness as a third party insurance company.

Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines Section 15051(b)).

Here, the County is the Lead Agency for the project under CEQA. The Commission is a Responsible Agency for this proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project (CEQA Guideline 15050(b)). The specific activities which must be conducted by a Responsible Agency are contained in CEQA Guideline Section 15096.

Subsequent to the issuance of a Notice of Preparation for an EIR in September 1998, a Draft EIR for the Bell Road Widening Project was prepared by the Placer County Department of Public Works and released for public comment in March 1999. Upon receipt of public comments, as well as further consideration by County staff, new project elements or project modifications were considered and analyzed in a recirculated Draft EIR. The recirculated Draft EIR was released for public comment in September 2000. Several public workshops and community meetings were also held throughout the development of the EIR.

A Final EIR was released to the public in May 2001, formally addressing all comments received on both the initial Draft EIR and the recirculated Draft EIR. Throughout the EIR process the County sought to develop alternatives that would mitigate the impacts of the road widening project to the greatest extent possible. Although residual impacts remain in three resource areas, the project alternative recommended by the County staff in the Final EIR incorporates project elements designed to reduce impacts by

minimizing tree loss, reducing noise levels below pre-project conditions, and improving traffic safety, among other considerations. The Final EIR incorporates both resource impact mitigation measures and a monitoring program designed to reduce impacts to a less-than-significant level in a number of areas, including: Land Use; Transportation and Circulation; Air Quality; Hydrology and Water Quality; Noise; Aesthetics; Biological Resources; Geology; Cultural Resources; and Public Facilities.

On July 10, 2001, the Placer County Board of Supervisors took discretionary action on the Bell Road Widening Project and certified the Final EIR (SCH # 1999809203); adopted the Findings of Fact, including applicable mitigation measures and a mitigation monitoring program; and approved a Statement of Overriding Considerations for significant unavoidable impacts in the three resource areas noted above (biology, noise, and traffic safety). A Notice of Determination was subsequently filed with the state Office of Planning and Research by the Placer County Planning Department on July 13, 2001, in compliance with Sections 21108 and 21152 of the Public Resources Code.

We have reviewed and considered the Draft and Final EIRs, the Statement of Overriding Considerations, and the resolution adopted by the County, and we find that these documents are adequate for our decision-making purposes under CEQA. We also find that the County reasonably concluded that the proposed project, including the mitigation measures described in Table 3-1 of the Recirculated Draft EIR, and the Mitigation Monitoring Program contained in Chapter 4 of the Final EIR, avoids and/or reduces the impacts of the project to the maximum extent possible. We conclude that there is substantial evidence in the record that each of the identified alternatives is infeasible because they would not allow the project to achieve its basic objectives nor accomplish the goals and

policies of the County's transportation plans and other adopted County policies. We conclude that the County reasonably found that certain mitigation measures, as described in the Final EIR, would lessen but not necessarily eliminate the potential adverse environmental effect associated with the project and that those impacts remain significant and unavoidable. These impacts were in the resource areas of biology, noise, and traffic safety. We conclude that the County reasonably found that there were no other feasible mitigation measures or alternatives that the Board of Supervisors could adopt which would reduce these impacts to less than significant levels. We conclude that the County reasonably found that to the extent that these impacts would not be substantially lessened or eliminated, that specific economic, legal, social, technological, or other considerations identified in the Statement of Overriding Considerations support approval of the project, including providing for a balance of transportation options, economic growth, safety, and quality of life benefits.

D. Ratemaking Considerations

The PG&E land involved in the proposed easement and license is part of PG&E's hydroelectric generation facilities and is therefore considered non-nuclear generation-related property. Compensation received by PG&E from the County for the easements would be credited to Other Operating Revenue according to the accounting guidelines established for the Transition Cost Balancing Account (TCBA). This treatment of revenues from the proposed easements is unopposed.

3. Discussion

Section 851 provides that no public utility "shall . . . encumber the whole or any part of . . . property necessary or useful in the performance of its duties to the public, . . . without first having secured from the Commission an order

authorizing it to do so.” Since the easements proposed to be conveyed to the County would be encumbrances on PG&E property, we apply Section 851 in considering this application.⁸

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is adverse to the public interest. In reviewing a Section 851 application, the Commission may “take such action, as a condition to the transfer, as the public interest may require.”⁹ The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.¹⁰

We find that PG&E’s conveyance of the proposed easements to the County would serve the public interest. The proposed easements will not interfere with PG&E’s use of the property or with service to PG&E customers, and will be utilized in a manner consistent with Commission and legal requirements. PG&E’s conveyance of the easements to the County would also serve the public interest by enabling the County to widen Bell Road to address traffic problems.

We also approve the proposed ratemaking treatment for the compensation that the County will pay to PG&E for the easements. Since this land is part of PG&E’s hydroelectric generation facilities, it is consistent with previously established guidelines that the revenue be credited to the Other Operating Revenue sub-account of the TCBA.

⁸ Decision (D.) 01-08-069.

⁹ D.3320, 10 CRRC 56, 63.

¹⁰ D.00-07-010 at p. 6.

For all of the foregoing reasons, we grant the application of PG&E pursuant to Section 851, effective immediately.

4. Final Categorization and Waiver of Review Period

Based on our review of this application, we conclude that there is no need to alter the preliminary determinations as to categorization and need for a hearing made in Resolution ALJ 176-3086, dated April 22, 2002). Moreover, since this proceeding is uncontested and we grant the relief requested, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

Findings of Fact

1. The proposed easements will not interfere with PG&E's use of the property or with service to PG&E's customers, and will be utilized in a manner consistent with Commission and legal requirements.
2. The County is the Lead Agency for the proposed project under CEQA.
3. The County prepared an EIR for the project, which found that (a) the proposed project, the mitigation measures applicable to the project, and the Mitigation Monitoring Program avoids and/or reduces the impacts of the project to the maximum extent possible; (b) there is substantial evidence in the record that each of the identified alternatives is infeasible because they would not allow the project to achieve its basic objectives nor accomplish the goals and policies of the County's transportation plans and other adopted County policies; (c) certain mitigation measures as described in the Final EIR would lessen but not necessarily eliminate the potential adverse environmental effect associated with the project and that those impacts in the areas of biology, noise, and traffic safety remain significant and unavoidable; (d) there were no other feasible mitigation measures or alternatives which would reduce these impacts to less than

significant levels; and (e) the County was not required to and did not adopt mitigation measure 8-2B in Table 3-1 of the recirculated EIR and Table 4-1 of the Final EIR.

4. On July 10, 2001, the Placer County Board of Supervisors certified the Final EIR (SCH # 1999809203); adopted the Findings of Fact, including applicable mitigation measures and a mitigation monitoring program; and approved a Statement of Overriding Considerations for significant unavoidable impacts in the three resource areas of biology, noise, and traffic safety.

5. The Commission is a Responsible Agency for the proposed project under CEQA.

6. Consistent with the County's findings and determinations, we find (a) the proposed project, including the mitigation measures as described in Table 3-1 of the Recirculated Draft EIR, and the Mitigation Monitoring Program contained in Chapter 4 of the Final EIR, avoids and/or reduces the impacts of the project to the maximum extent possible; (b) there is substantial evidence in the record that each of the identified alternatives is infeasible because they would not allow the project to achieve its basic objectives nor accomplish the goals and policies of the County's transportation plans and other adopted County policies; (c) that certain mitigation measures as described in the Final EIR, would lessen but not necessarily eliminate the potential adverse environmental effect associated with the project and that those impacts remain significant and unavoidable; (d) these impacts were in the resource areas of biology, noise, and traffic safety; (e) that there were no other feasible mitigation measures or alternatives which would reduce these impacts to less than significant levels; (f) that to the extent that these impacts would not be substantially lessened or eliminated, that specific economic, legal, social, technological, or other considerations identified in the

Statement of Overriding Considerations support approval of the project, including providing for a balance of transportation options, economic growth, safety, and quality of life benefits; and (g) the County was not required to and did not adopt mitigation measure 8-2B in Table 3-1 of the recirculated EIR and Table 4-1 of the Final EIR.

7. Compensation received by PG&E from the County for the proposed easements will be credited to Other Operating Revenue according to accounting guidelines established for the TCBA.

8. The project will enable the County to widen Bell Road from two to four lanes in order address traffic problems.

Conclusions of Law

1. The EIR, Statement of Overriding Considerations, and resolution adopted by the County are adequate for the Commission's decision-making purposes as a Responsible Agency under CEQA.

2. Consistent with § 851, PG&E's conveyance of the two drainage easements and the two regrading easements to the County for the project will serve the public interest and should be authorized.

3. The decision should be effective today in order to allow the two drainage easements and two regrading easements to be conveyed to the County expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to convey two permanent drainage easements and two permanent regrading easements, as described in Exhibits A and B of the Application, to the Placer County Department of Public Works.

2. When the final easement documents are executed, PG&E shall submit a copy of those documents to the Director of the Energy Division within sixty (60) days of this order.

3. PG&E shall credit the fees of \$13,000.00 to the Other Operating Revenue sub-account of the Transition Cost Balancing Account.

4. This proceeding is closed.

This order is effective today.

Dated June 27, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners